

Serial No. 09/345,269

Reply to Office Action of February 17, 2004

REMARKS

Responsive to the Office Action mailed February 17, 2004, Applicant has studied the Examiner's comments and the cited art. Claims 1-21 are currently pending. In view of the following remarks, Applicant respectfully submits that the application is in condition for allowance.

Claim Rejections Under 35 U.S.C. § 103

Claims 1, 7, 11, 15-17, and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tonnby et al., U.S. Patent No. 6,515,996, in view of Kennedy et al., U.S. Patent No. 5,903,603. Applicant respectfully traverses the rejections.

With respect to claims 1, 7, 11, and 15, the Office Action admits that Tonnby fails to disclose

the calling modem including a timer, the timer being operable to store a network latency value, the calling modem being operable to compare the network latency value to a network latency threshold, to transmit a low speed modem connection selection signal if the network latency value is greater than the network latency threshold, and to transmit a high speed modem connection selection signal if the network latency value is less than the network latency threshold; and an answering modem coupled to the internet protocol network, the answering modem being operable to receive the low speed modem connection signal and the high speed modem connection signal.¹

The Office Action attempts to fill this gap with Kennedy, asserting that Kennedy discloses these elements. Although Applicant agrees that Kennedy recites a modem including a timer, Kennedy fails to teach or suggest the timer storing a network latency value, as defined by Applicant: "Network latency is here defined as the time between the transmission of the t30-indicator (CNG) signal and the reception of the t30-indication (CNG sent) signal."² "Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim."³ Kennedy nowhere teaches or suggests a network latency as defined by Applicant, much less a timer capable of storing a network latency value or comparing a network latency value to a network latency threshold.

Furthermore, contrary to the assertion of the Office Action, Kennedy fails to teach or suggest transmitting a low or high speed modem connection selection signal depending on the comparison between the network latency value and a network latency threshold. The

¹ Paper 10, pages 2-3.

² Specification, page 6, lines 9-10.

³ MPEP § 2106; see also MPEP § 2173.05(a).

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Office Action cites Col. 9, lines 55-63 of Kennedy to that purpose.⁴ This mischaracterizes Kennedy.

First, neither in the cited passage nor elsewhere is the timer of Kennedy used for a decision on selecting a modem connection selection signal. Rather, Kennedy recites the timer for a simple time-out function. If the timer exceeds the first or second time-out interval, instead of selecting a modem connection speed, the call is failed.⁵

Second, Kennedy recites determining modem connection speed in terms of a negotiation based on the capabilities of the two modems, rather than based on a network latency computation. The IWF 538 transmits reformatted local capabilities messages to the remote modem, then receives remote capabilities messages from the remote modem to establish a negotiated data rate based on those messages.⁶ Kennedy nowhere teaches or suggests that a network latency computation and comparison is used in the selection of a modem connection speed.

Therefore, even if the Office Action justifies combining Tonnby and Kennedy, which Applicant does not admit, the combination fails to achieve Applicant's claimed subject matter. For these reasons, Applicant respectfully requests withdrawal of the rejections.

Claims 16-17 and 20 depend from allowable claim 15 and are therefore also allowable. For at least this reason, Applicant respectfully requests withdrawal of the rejections.

Claims 2, 3, 5, 9, 13, and 18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tonnby et al., U.S. Patent No. 6,515,996, in view of Kennedy et al., U.S. Patent No. 5,903,603 and further in view of Schuster, U.S. Patent No. 6,483,600. Applicant respectfully traverses the rejections.

Claims 2, 3, 5, 9, 13, and 18 depend from allowable claims 1, 7, 11, and 15, and are therefore also allowable. For at least this reason, Applicant respectfully requests withdrawal of the rejections.

Claims 4, 6, 8, 10, 12, 14, 19, and 21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tonnby et al., U.S. Patent No. 6,515,996, in view of Kennedy et al., U.S. Patent No. 5,903,603, and in view of Schuster, U.S. Patent No. 6,483,600, and further in view of Yashida et al., U.S. Patent No. 6,437,870. Applicant respectfully traverses the rejections.

Claims 4, 6, 8, 10, 12, 14, 19, and 21 depend from allowable claims 1, 7, 11, and 15 and are therefore also allowable. For at least this reason, Applicant respectfully requests withdrawal of the rejections.

⁴ Paper 10, page 3.

⁵ Fig. 7, blocks 725, 745, and 755; Col. 9, lines 38-42 and 48-54; Col. 10, lines 16-18.

⁶ Col.9, lines 60-62; Col. 10, lines 19-37.

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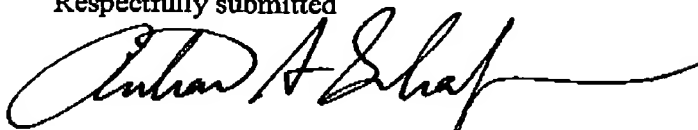
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CONCLUSION

Applicant respectfully submits that all issues and rejections have been adequately addressed, that all claims are allowable, and that the case should be advanced to issuance.

If the Examiner has any questions or wishes to discuss the claims, Applicant encourages the Examiner to call the undersigned at the telephone number indicated below.

Respectfully submitted



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